

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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In re:

CAREFREE WILLOWS LLC, a Nevada  
limited liability company,

Debtor.

CAREFREE WILLOWS LLC, a Nevada  
limited liability company,

Appellant,

vs.

AG/ICC WILLOWS LOAN OWNER,  
LLC; and UNITED STATES TRUSTEE,  
LAS VEGAS,

Appellees.

Case No. BK-S-10-29932-MKN

Chapter 11

USDC Appeal No. 2:14-cv-1322-APG

Appeal Reference No. 14-48

**ORDER DENYING MOTION FOR LEAVE  
TO APPEAL INTERLOCUTORY ORDER,  
AND REMANDING CASE TO  
BANKRUPTCY COURT**

(Dkt. #3)

Debtor Carefree Willows LLC (“Debtor”) has filed this appeal from the Bankruptcy Court’s Order Staying Proceedings (the “Stay Order”) entered on July 18, 2014. Because that Stay Order was an interlocutory order, Debtor must obtain leave to file this appeal. 28 U.S.C. § 158(a).

While district courts have discretionary authority to hear interlocutory appeals, review of interlocutory orders is generally disfavored. *See In re Fones4all Corporation*, No. CV–01443 JHN, 2010 WL 1172246, at \* 1 (C.D. Cal. Mar. 23, 2010). Specifically, the Ninth Circuit has explained that courts should not grant leave to appeal from an interlocutory order of a bankruptcy judge unless the following requirements are met: “(1) that there be a controlling question of law, (2) that there be substantial grounds for difference of opinion, and (3) that an immediate appeal may materially advance the ultimate termination of the litigation.” *In re Cement Antitrust Litigation*, 673 F.2d 1020, 1026 (9th Cir. 1982).

*In re Thinkfilm, LLC*, 2013 WL 654010, at \*1 (C.D. Cal. Feb. 21, 2013). Courts also “look to the [similar] standards set forth in 28 U.S.C. § 1292, which governs interlocutory appeals from the district courts to the circuit courts.” *Greenspan v. Orrick, Herrington & Sutcliffe LLP*, 2010 WL

1 3448240, at \*1 (N.D. Cal. Sept. 1, 2010). “[I]nterlocutory appeals are intended to be rare and  
2 used only in ‘exceptional circumstances’ . . . .” *Id.* (quoting *In re Cement Antitrust Litig.*, 673  
3 F.2d at 1026).

4 In the present case, there is no “controlling question of law” to justify this interlocutory  
5 appeal. The Stay Order was based, apparently in large part, upon the Bankruptcy Court’s finding  
6 that some of the Debtor’s “actions were not taken in good faith and evince [an] ulterior  
7 motive . . . .” (Dkt. #3 at 25:16-20.) Such determinations of fact—regarding a lack of good  
8 faith—are inappropriate for interlocutory appeal. *Moore v. Deutsche Bank Nat’l Trust Co.*, 2011  
9 WL 5593185, at \*3 (D. Haw. Nov. 17, 2011) (citations omitted). Moreover, contrary to the  
10 Debtor’s argument, the Bankruptcy Court had both statutory and inherent authority to enter the  
11 Stay Order. “[T]he power to stay proceedings is incidental to the power inherent in every court to  
12 control the disposition of the causes on its docket with economy of time and effort for itself, for  
13 counsel and for litigants.” *In re Bellucci*, 119 B.R. 763, 770 (Bankr. E.D. Cal. 1990) (quoting  
14 *Landis v. N. Am. Co.*, 299 U.S. 248 (1936)).

15 Second, as the Debtor admitted at oral argument, the goal of its appeal is for me to order  
16 the Bankruptcy Court to vacate its stay and to immediately consider the Debtor’s Fifth Amended  
17 Chapter 11 plan. The Stay Order does not state that the Bankruptcy Court will not consider the  
18 Fifth Amended Plan. Rather, the order simply stays the proceedings regarding that plan until  
19 further order of the Bankruptcy Court. The Bankruptcy Court has not refused to consider that  
20 plan, it has merely delayed the decision. I am loathe to interfere with the Bankruptcy Court’s  
21 discretion to schedule and organize its docket.

22 Finally, it is not clear that an immediate appeal of the Stay Order will materially advance  
23 the ultimate termination of the litigation. *In re Cement Antitrust Litig.*, 673 F.2d at 1026. My  
24 court docket is very busy, and there is no likelihood (let alone anything close to a guarantee) that  
25 this appeal will be resolved more quickly than the Bankruptcy Court will process the underlying  
26 litigation. While the Debtor has requested that I expedite the review of this appeal, most other  
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1 litigants before me likewise want expedited resolution of their disputes. The lack of swift  
2 progress of this appeal so far is a fair indication that this appeal will not proceed quickly.

3 Based upon the foregoing, there are insufficient reasons to grant Debtor leave to appeal  
4 the interlocutory Stay Order. Accordingly,

5 IT IS HEREBY ORDERED that Debtor's motion for leave to appeal is DENIED. This  
6 matter is hereby REMANDED to the Bankruptcy Court.

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8 DATED THIS 22nd day of October, 2014.

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12 ANDREW P. GORDON  
13 UNITED STATES DISTRICT JUDGE  
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